IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition No. 1849 of 2005

M/s. Rohak Brothers, Mumbai .. Petitioner
V/s.
Commissioner of Income-Tax,
XVI, Mumbai & Others .. Respondents

Ms. A. Vissanji for the Petitioner
Mr. Parag Vyas for the Respondents

CORAM : DR. S. RADHAKRISHNAN &
J.H. BHATIA, JJ.
DATED : 25.07.2005.

P.C.:-

1. Rule. Rule made returnable forthwith. By consent taken up for hearing. Heard the learned counsel for the Petitioner and the Respondents. The short issue involved in this is that the Petitioner is challenging the order dated 15.3.2004 passed by the Commissioner of Income Tax under Section 80 HHC(2)(a) of the Income Tax Act of 1960, refusing to extend a further statutory period of three months beyond the statutory period of six months. Relevant portion of Section 80 HHC (2)(a) reads as under:-

> **80HHC 2(a)**
> This section applies to all goods or merchandise, other than those specified in clause (b), if the sale proceeds of such goods or merchandise exported out of India are [received in, or brought into, India] by the assessee [(other than the supporting manufacturer)] in convertible foreign exchange [, within a period of six months from the end of the previous year or, [within such further period as the competent authority may allow in this behalf].]

2. In the above, there is no dispute that the Petitioner had exported certain quantity of diamonds and the sale proceeds could not be received within the statutory period of six months. In that behalf, the Petitioner had made an Application on 30.9.1997, seeking a further extension of ninety days, as per

Section 80HHC 2 (a) contending therein that the purchaser is in financial difficulty and the purchaser has assured to remit the amount within a couple of months and that in the diamond market, there is a world wide recession and demands were low. It may be noted here that as the sale proceeds were received on 20.12.1997, there is no dispute that the amount was received before 31.12.1997. Strangely the Respondents did not even bother to respond to the above Application of the Petitioner dated 30.9.1997 and the response to the said Application came only after a lapse of almost seven years, by their letter dated 19.1.2004, asking for certain particulars and finally the impugned order dated 15.3.2004 came to be passed by the Commissioner of Income Tax. Perusal of the order shows that the Commissioner of Income Tax has not given any valid and plausible reasons as to why the discretion vested in him under Section 88 HHC 2(a) could not have been exercised in favour of the Petitioner. We find the order to be totally un-sustainable and the concerned officer ought to have exercised the discretion in favour of the Petitioner, especially when it is an admitted fact that the entire sale proceeds have been received within the aforesaid period of three months.

3. Under the aforesaid facts and circumstances, Rule is made absolute in terms of the prayer clause (a).

(DR. S. RADHAKRISHNAN, J.)

(J.H. BHATIA, J.)